

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK ANTOS,

Plaintiff-Appellant,

v

DIOCESE OF LANSING, BISHOP CARL F.
MENGELING, BISHOP JAMES MURRAY,
ARCHDIOCESE OF SANTA FE, ARCHBISHOP
MICHAEL JAROBEE SHEEHAN, ROBERT F.
SANCHEZ, f/k/a ARCHBISHOP ROBERT F.
SANCHEZ, THE SERVANTS OF THE
PARACLETE, ARCHDIOCESE OF DETROIT,
CARDINAL ADAM JOSEPH MAIDA, and
BISHOP THOMAS GUMBLETON,

Defendants-Appellees,

and

JASON B. SIGLER, f/k/a FATHER JASON
SIGLER,

Defendant.

UNPUBLISHED
November 15, 2005

No. 262137
Wayne Circuit Court
LC No. 04-413121-NZ

Before: Cavanagh, P.J., and Smolenski and Zahra, JJ.

SMOLENSKI, J. (*dissenting*).

Because plaintiff's complaint adequately pleaded facts, which could establish that defendants participated in a civil conspiracy to aid and abet the commission of criminal sexual conduct by defendant Sigler and concealed the nature and extent of their involvement in that civil conspiracy, I conclude that the trial court's grant of summary disposition under MCR 2.116(C)(7) was premature. Therefore, I respectfully dissent.

In the present case, the trial court granted summary disposition in favor of defendants on the sole basis that his claim was barred by the applicable period of limitations. Summary disposition under MCR 2.116(C)(7) is appropriate where the plaintiff's complaint is barred by immunity. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). While a party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other

documentary evidence, no party is obligated to present such support. *Id.* at 119. However, unless the movant submits documentation contradicting the contents of the complaint, they must be accepted as true. *Id.*

Plaintiff's cause of action is premised on the theory that defendants engaged in a civil conspiracy. A civil conspiracy "is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 507; 686 NW2d 770 (2004). In addition, a civil conspiracy claim must be based on an underlying actionable tort. *Id.* In his complaint, plaintiff alleged that "Defendants by acts of commission and by acts of omission, did knowingly, intentionally, conspiratorially and in concert with one another, aid and abet in the ongoing acts of sexual abuse perpetrated against Plaintiff" Hence, plaintiff sufficiently alleged that defendants engaged in a conspiracy to aid and abet the commission of the crime of criminal sexual conduct.

While plaintiff's cause of action would normally have to be brought within three years of the occurrence of the underlying injury, see MCL 600.5805(10), if a person who is or may be liable for any claim fraudulently conceals the existence of the claim or of any person who is liable for the claim, the action may be commenced within two years after the person entitled to bring the action discovers or should have discovered the existence of the claim or the identity of the person who is liable. MCL 600.5855. In order to take advantage of this tolling provision, the plaintiff must plead in his or her complaint the acts or misrepresentations that comprised the fraudulent concealment. *Doe v Roman Catholic Archbishop*, 264 Mich App 632, 643; 692 NW2d 398 (2004).

In addition to alleging that defendants conspired to aid and abet the commission of the criminal sexual conduct, plaintiff further alleged that, thereafter, defendants continuously and affirmatively misrepresented and concealed the information relating to Sigler's sexual misconduct and, in this way, concealed their various roles in the conspiracy. Plaintiff further alleged that, because of this ongoing conspiracy to conceal the defendants' roles, he did not and could not have learned of defendants' culpability under his civil conspiracy theory until 2002. Defendants have not rebutted these allegations through the submission of documentary evidence in support of their motion. Therefore, because plaintiff sufficiently alleged that defendants fraudulently concealed the information necessary for plaintiff to realize that he had a civil conspiracy claim against defendants, and this allegation must be taken as true, *Maiden, supra* at 119, summary disposition under MCR 2.116(C)(7) was prematurely granted.

Furthermore, this case is readily distinguished from the situation in *Doe, supra*. Under the plain language of MCL 600.5855, the period of limitations is tolled for any claim where the person who may be liable conceals the existence of *the claim* from the person entitled to sue on *the claim*. Thus, each claim must be independently evaluated to determine whether the tolling provisions of MCL 600.5855 apply. In *Doe*, the plaintiff alleged causes of action based on negligence and intentional infliction of emotional distress. *Id.* at 643. Based on the elements of those individual claims, the Court in *Doe* concluded,

. . . plaintiff has failed to allege a claim of fraudulent concealment that avoids the applicable statutes of limitation because plaintiff's causes of action were not concealed from him, i.e., he knew or should have known all the essential elements

of potential causes of action against defendant at the time of his injury. This is not so simply because plaintiff knew he was sexually abused by Burkholder. This is so because of the entire constellation of facts that were known or should have been known to plaintiff at the time the abuse occurred. [*Id.* at 644.]

In this case, it is not apparent that plaintiff knew or should have known all the essential elements of his civil conspiracy claim. While plaintiff clearly knew about the underlying criminal conduct and was aware that one or more defendants might be indirectly liable for that conduct, it does not necessarily follow that plaintiff knew or should have known that defendants conspired to aid and abet the commission of the sexual abuse.

For these reasons, I would reverse and remand for further proceedings.

/s/ Michael R. Smolenski